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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,926	01/16/2004	Artur Schworer	3135	8226

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EXAMINER	
SAFAVI, MICHAEL	
ART UNIT	PAPER NUMBER

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,926

Applicant(s)

SCHWORER, ARTUR

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on January 16, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/16/04, 2/23/05</u> | 6) <input type="checkbox"/> Other: _____ |

Specification

The disclosure is objected to because of the following: Lines 9-10 on page 9 appear to present a double inclusion of "to each other".

Further, the specification, as at pages 7 and 9, appears to describe the "spacers" 6, (32-39), as mounted "on top of each other" when it appears from the drawings and description that the spacers are actually positioned side by side.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, lines 9-10, it is not understood as to what is being defined by "elastic sealing layer disposed between the formwork elements and the central element" as the specification does not appear to describe an "elastic sealing layer".

Lines 11-14 appear to present "mounting positions" with respect to the "spacers". However, it is not understood as to what a "mounting position" defines. The term "position" would not appear appropriate in defining an element of the invention.

Line 20, is the recitation "elements" intended to be plural or possessive?

Lines 19-20, "the elements sealing lip" lacks antecedent basis within the claim. It is not clear as to what "the elements sealing lip" refers. Nor is it clear as to what "the elements" refers.

Line 21, "The two mounting positions facing one another" lacks an appropriate antecedent basis within the claim.

Further, **claim 12** appears to define the spacers as mounted "on top of one another" when the specification appears to describe the spacers as side-by-side. See also, lines 20-21 of claim 12 which recite "one uppermost spacer" as well as line 2-3 of claim 13 which recite "a respectively uppermost spacer".

Claim 13, line 2, "the elastic sealing lips" lacks antecedent basis within the claim.

Claim 17, line 2, should "therein" be --wherein--?

Claim 18, it is not clear as to what is being defined by "each lug having a vertical penetrating direction". How does a lug possess a "vertical penetrating direction"? What, otherwise, is a vertical penetrating direction"? Lines 6-7, it is not understood as to what is being defined by "the wedge rod having wedge arms for passage of the lugs". The specification does not appear clear as to how "the lugs" can pass through the "wedge arms". Lines 8-9, it is not understood as to what is being defined by "driving the wedge rod forward or backward". The specification does not appear clear as to how the "the wedge rod" is driven, or moved, "forward and/or backward".

Claim 21, lines 2-3, it is not understood as to what is being defined by "the central element is at least partially considerably longer or shorter..." Specifically, it is not

understood as to what is being defined by "at least partially considerably"? It is not clear as to what degree "at least partially considerably" defines.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12-14 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Shoemaker. Shoemaker discloses, Figs. 1 and 2, a formwork system for forming a transition of reinforcement between a concrete component and an adjacent concrete component in a connecting direction or to a front side of a concrete formwork, the system comprising two formwork elements comprising parallel flat vertically oriented formwork shells 20, a central element 74 or 80 disposed between the formwork elements proximate an end of the formwork elements, elastic sealing layer 66 or 78 disposed between the formwork elements and the central element, at least four spacers 50, 52, 54, 66 or 78 and mounting positions for the spacers, one mounting position each being provided at two outer sides of the central element facing the

formwork elements, (as 52 and 54), another mounting position each being provided on inner sides of the formwork element facing the outer sides of the central element, (as 54 or 78), the spacers being configured for enabling a plurality of spacers to be mounted "on top of one another" at each mounting position with at least one spacer being mounted at each mounting position and one of the elements "sealing lip" 44 is disposed on at least one uppermost spacer of the two mounting positions facing one another. Tape joint is at 32. Vertical sections are as at

Claims 12-14 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German reference 3810256. German '256 discloses, Fig. 1, a formwork system for forming a transition of reinforcement between a concrete component and an adjacent concrete component in a connecting direction or to a front side of a concrete formwork, the system comprising two formwork elements comprising parallel flat vertically oriented formwork shells 1, a central element 9/9 disposed between the formwork elements proximate an end of the formwork elements, elastic sealing layer 6, 6 disposed between the formwork elements and the central element, at least four spacers 3, 8, 8, 3 and mounting positions for the spacers, one mounting position each being provided at two outer sides of the central element facing the formwork elements, (as 8 and 8), another mounting position each being provided on inner sides of the formwork element facing the outer sides of the central element, (as 3 and 3), the spacers being configured for enabling a plurality of spacers to be mounted "on top of one another" at each mounting position with at least one spacer being

mounted at each mounting position and one of the elements "sealing lip" 6 or 6 is disposed on at least one uppermost spacer of the two mounting positions facing one another. One side of 6 and the other side of 6 would form the "sealing lip" for spacers 3 and 8, respectively. Vertical sections mounted to the formwork elements are at 4, for example with the central element 9/9 and the spacers 3, 8 extending in the connecting direction to a common final plane with the final plane lying perpendicular to the connecting direction. At least one crossbar 2 abuts the common final plane with the crossbar 2 being tensioned with the formwork elements via stopend ties, (e.g., nuts serving to tension the crossbars 2 and forms 1,1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoemaker.

To have provided spaced tie rods through the forms, spacers, seals and central element 20, 50, 52, 54, 66, 78, 80, 20 thus assuring an integral assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fig. 7 or 8 of Shoemaker. Attaching the spacers 50 52 via screws instead of nails 98 would have constituted a further obvious expedient to one having ordinary

skill in the art at the time the invention was made with screws being an old and well known substitute for nails.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference 3810256 when considering Shoemaker.

To have provided spaced tie rods through the forms, spacers, seals and central element 1, 3, 8, 9/9, 8, 3, 1 of German '256, thus assuring an integral assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fig. 7 or 8 of Shoemaker. Attaching the spacers 3, 3 to the forms 1, 1 and spacers 8, 8 to the central member 9/9 via screws or nails 98 would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made as taught by Shoemaker's fasteners 98 with screws being an old and well known substitute for nails.

Claims 12-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoemaker in view of either of Michalak or Dendinger.

Shoemaker discloses, Figs. 1 and 2, a formwork system for forming a transition of reinforcement between a concrete component and an adjacent concrete component in a connecting direction or to a front side of a concrete formwork, the system comprising two formwork elements comprising parallel flat vertically oriented formwork shells 20, a central element 80 with tape joint 32 extending therefrom disposed between the formwork elements proximate an end of the formwork elements, elastic sealing layer

66 or 78 disposed between the formwork elements and the central element, at least three spacers 50, 54, 52 and mounting positions for the spacers, one mounting position each being provided at two outer sides of the central element facing the formwork elements, (as 52 and 54), another mounting position each being provided on inner sides of the formwork element facing the outer sides of the central element, (as 50 or 52), the spacers being configured for enabling a plurality of spacers to be mounted "on top of one another" at each mounting position with at least one spacer being mounted at each mounting position and one of the elements "sealing lip" 32 or 66 or 78 is disposed on at least one uppermost spacer of the two mounting positions facing one another. Shoemaker does not appear to specifically disclose "at least four spacers".

However, each of Michalak and Dendinger teach application of reinforcing grids along opposite sides of a concrete wall, 30/32 in Fig. 1 of Michalak and 24/28, 26/30 in Fig. 2 of Dendinger. Therefore, to have provided the Shoemaker form with two opposing reinforcing grids so as to establish a strong concrete wall, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Michalak and Dendinger. With such a modification the resulting Shoemaker wall form would possess spacers 50, 54 on either side of central element 80 with another pair of "sealing lips" 66, 78 therebetween so as to provide for appropriate sealing where the second rebar extends therethrough. Thus, the modified Shoemaker assembly would possess *at least four spacers 50, 54, and 52, 50 and mounting positions for the spacers, one mounting position each being provided at two outer sides of the central element facing the formwork elements, (as 52 and 54), another mounting*

position each being provided on inner sides of the formwork element facing the outer sides of the central element, (50 and 50), the spacers being configured for enabling a plurality of spacers to be mounted "on top of one another" at each mounting position with at least one spacer being mounted at each mounting position and one of the elements "sealing lip" 66 or 78 is disposed on at least one uppermost spacer of the two mounting positions facing one another. The extra spacer 50 on the side with 52 as well as the extra "sealing lips" 66, 78 are added to duplicate the side of the Shoemaker form already possessing the rebar 36.

To have provided spaced tie rods through the forms, spacers, seals and central element 20, 50, 54, 80, 52, 50, 20 thus assuring an integral assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fig. 7 or 8 of Shoemaker. Attaching the spacers 50 52 via screws instead of nails 98 would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made with screws being an old and well known substitute for nails.

Claims 18 and 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
June 22, 2005